

The Family Court of the State of Delaware

In and For New Castle County

Petitioner

T----- C----- ----- -----, -- -----
Attorney Marie Crossley, Esquire

Respondent

E---- C----- ----- -----, -- -----
Attorney Bonnie Copeland, Esquire

File No. CN15-02168
CPI No(s) 20-08260
Nature of Proceeding Cross Motions to Reargue – Alimony Modification Order
Date of Submission: 9/28/2021 Date of Decision: 12/26/2021 Date Mailed: 12/27/2022

ORDER – CROSS MOTIONS TO REARGUE – ALIMONY MODIFICATION ORDER

Before the **HONORABLE JANELL S. OSTROSKI**, Judge of the Family Court of the State of Delaware, are the Cross Motions to Reargue the Court's decision of August 31, 2021. T----- C----- (herein "Husband") represented by Marie Crossley, Esq. filed his Motion for Reargument (herein "Husband's Motion") on or about September 15, 2021, and E---- C----- (herein "Wife") represented by Bonnie Copeland, Esq. filed her Motion for Reargument (herein "Wife's Motion") on or about September 15, 2021. Husband responded to Wife's Motion on or about September 28, 2021. Wife responded to Husband's Motion on or about September 28, 2021. This Order will address both Motions.

LEGAL PROCEDURE

On November 20, 2018, the Court ordered Husband to pay Wife \$1,683 per month in alimony. Husband filed a Petition to Modify on or about March 30, 2020. Wife filed an Answer to that Petition on or about July 1, 2021. After a hearing on February 23, 2021 and written closing arguments being submitted, the Court entered its final decision on August 31, 2021. Both parties timely filed Motions to Reargue and timely filed Responses to the opposing party's Motion. This is the Court's written decision on both Motions.

STANDARD OF REVIEW

A Motion to Reargue will not be granted unless "it is shown that [the Court] made a legal or factual error of controlling effect."¹ Also, "a Motion to Reargue is not a vehicle to introduce

¹ J-M-R v. K-J.R, 2013 WL 8181542, at *3 (Del. Fam. Ct. Sept. 23, 2013) citing Martin v. Martin, 857 A.2d 1037, 1039 (Del. Fam. Ct. 2004).

new evidence or arguments which could have been introduced at the original hearing.”² Furthermore, a Motion to Reargue is not proper when “one party is simply unhappy with [the Court’s] rulings, makes the same arguments that he or she made at trial, or attempts to [submit] evidence which could have been but was not [introduced] at trial.”³

FACTUAL BACKGROUND

Any relevant facts are set forth in the sections below. The Court will address each argument and the response thereto separately.

DISCUSSION

I. Husband’s Motion to Reargue

A. The August 31st Order Commits Reversible Error by Failing to Limit Wife’s Expenses to the Marital Standard of Living.

Husband argues that this Judge committed “reversible error by allowing Wife expenses well in excess of the marital standard of living.”⁴ Wife argues that “Husband’s argument that the original alimony Order sets a ceiling on expenses is baseless.”⁵

Husband appears to argue that the marital standard of living is the same as a party’s living expenses. They are not. Pursuant to 13 *Del. C.* § 1512(c), when determining alimony, the Court must consider many factors which include the marital standard of living *and* a party’s financial resources and the party’s ability to meet their financial needs (i.e. their expenses).⁶ The Court does not use the parties’ expenses to determine the marital standard of living but rather considers the lifestyle that the parties lived to determine the marital standard of living.⁷ As such, most of Husband’s argument is without merit because he equates the marital standard of living with the parties’ expenses and they are different. The Court’s analysis needs to focus on whether there has been a substantial change in circumstances and not just on whether expenses have increased or decreased.⁸ Just because a party’s expenses have changed does not mean that party has

² *Id.*

³ *S.E.V. v. S.D.V.*, No. CS10-02232, 2013 WL 1749525, at *1 (Del. Fam. Ct. Mar. 28, 2013); *In re Marriage of Gray*, Del. Fam. Ct., No. CN94-09568, Tumas, J. (Jan. 10, 1997); *Ramon v. Ramon*, 963 A.2d 128 (Del. 2008).

⁴ Husband’s Motion at 2.

⁵ Wife’s Response to Husband’s Motion for Reargument at 2. (herein “Wife’s Response”)

⁶ The alimony statutory factors in and of themselves consider the marital standard of living and expenses to be two separate things. *See, e.g.*, 13 *Del. C.* § 1512(c)(1) (considering the “financial resources of the party seeking alimony . . . and his or her ability to meet all or part of his or her reasonable needs independently.”); 13 *Del. C.* § 1512(c)(3) (considering “the standard of living established during the marriage.”).

⁷ *See In re Marriage of J.M.R. and K.J.R.*, 213 WL 8181480 at *20 (Del. Fam. Ct. July 29, 2013).

⁸ *Fletcher v. Feutz*, 246 A.3d 540, 552 (Del. 2021) (“More recent Family Court case law established that a 15% *increase* or decrease in either party’s income *or expenses* does not amount to a real and substantial change in circumstances.”) (emphasis added). *Pedrotty v. Pedrotty*, 2004 WL 2154322 at *2 (Del. Sep. 24, 2004) (upholding the Family Court’s determination that a Husband failed to show a change in circumstance so substantial to allow a

changed their standard of living. In this instance, Wife remains in the same home, drives a similar car, takes similar vacations, etc. Her standard of living has not changed even if some of her individual expenses have changed.

Furthermore, Husband's argument regarding Wife's expenses is inconsistent with what he asserts when discussing his own expenses. Husband argues that alimony should be modified because his expenses have increased since the 2018 Alimony Order was entered.⁹ Specifically, Husband asserted at trial that six (6) of his current expenses exceed the allowed expense in the 2018 Alimony Order, some in the same categories that Husband claims is improper for Wife's expense to increase. To wit: The 2018 Alimony Order found that Husband's monthly expenses included \$2,500 for a mortgage, \$288 for medical and dental expenses for the children, \$25 for toys and presents, \$0 for automobile repairs and maintenance, and \$63 for automobile insurance.¹⁰ Husband is currently claiming that his current expenses for those items are: \$3,530 for a mortgage, \$350 for medical and dental expenses for the children, \$83 for toys and presents, \$165 for automobile repairs and maintenance, and \$112 for automobile insurance.¹¹ Overall, this is a \$1,364 increase in Husband's expenses. At the same time that Husband is asking the Court to find that his expenses have increased, Husband wants the Court to find that it is inappropriate to consider any increase in Wife's monthly expenses. Husband's argument in this regard is not logical. If it is appropriate for the Court to consider that Husband's expenses have increased, then it would also be appropriate for the Court to consider that Wife's expenses have increased. Furthermore, the Court finds Husband's argument to be disingenuous because he stipulated to every one of Wife's expense that decreased but objected to every one of her expenses that increased and then gave no argument as to why the Court should not consider the increase in the expense except to say that it is inappropriate to allow an increase in the expenses. Husband wants the Court to find that it is appropriate for his expenses to increase but only appropriate for Wife's expenses to decrease. Husband's argument is not logical and, therefore, is without merit.

B. The August 31st Order Commits Reversible Error by Failing to Apply Collateral Estoppel and *Res Judicata* to the Marital Standard of Living found by the Court in its Underlying Order

Husband argues that this Judge committed "reversible error by failing to apply the doctrines of collateral estoppel and *res judicata* to Wife's expenses and the marital standard of

modification of alimony even when Wife's expenses increased by \$700.); Rosario J.L. v. Josephine K.L., 431 A.2d 1256, 1257 (Del. 1987) (raising Wife's alimony award after considering how Wife's expenses increased since the initial hearing awarding alimony.); A.N. v. N.L., 2009 WL 1204994 at *3 (Del. Fam. Ct. Mar 11, 2009) (raising Wife's alimony award after she incurred additional expenses outside what was considered at the initial alimony hearing.)

⁹ See Amended Order – Ancillary Matter – Alimony (herein "2018 Alimony Order") at 4 (where the Court found Husband's monthly expenses to be \$5,332.)

¹⁰ 2018 Alimony Order (incorporating by reference Wife's Exhibit 2).

¹¹ Husband's Exhibit 3.

living from the prior order.”¹² Wife argues that “Husband misapplies the principles of collateral estoppel and *res judicata*.”¹³

Without restating all of the arguments by each party which is set forth in their Motions and Responses, this Court finds that the doctrines of collateral estoppel and *res judicata* do not apply in the instant case. The Court did not change its determination of the parties’ standard of living during the marriage nor did it hear testimony regarding the parties’ marital standard of living in the instant matter.¹⁴ The Court simply analyzed whether either parties’ income or expenses changed such that there was a substantial change in circumstances that created an undue benefit to Wife or undue burden to Husband. Here, both parties had changes to their expenses. However, contrary to Husband’s argument, this Court finds that Wife has not increased her standard of living. She remains in the marital home. She drives a similar car. She takes similar vacations. She is involved in similar activities. On the other hand, the argument could be made that Husband has increased his standard of living and that is why his expenses have changed; but Husband’s standard of living is less of an issue in this case because he has sufficient income to meet his expenses regardless of which standard of living he chooses to have. Therefore, this Court finds that Husband’s argument in this regard is without merit.

C. Husband argues that The August 31st Order Commits Reversible Error by Failing to Apply the Law of the Case to the Marital Standard of Living found by the Court in its Underlying Order.

Husband argues that this Judge committed “reversible error by failing to apply the law of the case to the marital standard of living found by the court in its underlying order.”¹⁵ Wife argues that “Husband misapplies law of the case doctrine.”¹⁶

“[T]he ‘law of the case’ is established when a specific legal principle is applied to an issue presented by facts *which remain constant* throughout the subsequent course of the *same litigation*.”¹⁷ (emphasis added.) The Court made findings in the 2018 Order regarding the standard of living during the marriage. The parties lived a comfortable lifestyle in a \$400,000 home in H----- with Husband being the primary wage earner and Wife staying home with the children. The Court did not change that standard of living during the instant hearing just because the Court found that some of the parties’ expenses changed. Furthermore, the instant matter is not the *same litigation*. Alimony was established. The instant matter is modification of alimony. Expenses do not necessarily *remain constant* even when a party remains in the same standard of living. As such, Husband’s argument holds no merit.

¹² Husband’s Motion at 6.

¹³ Wife’s Response at 10.

¹⁴ See 2018 Alimony Order at 14 (Aug. 29, 2018) (discussing the parties’ standard of living during the marriage); compare with Order – Modification of Alimony (Aug. 31, 2021) (herein “Alimony Modification Order”) (finding no determination of the parties’ standard of living during the marriage).

¹⁵ Husband’s Motion at 8.

¹⁶ Wife’s Response at 11.

¹⁷ Husband’s Motion at 8 (quoting Frederick-Conway v. Baird, 159 A.3d 285, 296 (Del. 2017)) (emphasis added.)

D. The August 31st Order Commits Reversible Error by Failing to Apply Collateral Estoppel to Wife's Income as Determined by Commissioner Haley.

Husband argues that, in the August 31, 2021 Order, this Judge committed “reversible error by failing to apply collateral estoppel to wife’s income as determined by Commissioner Haley.”¹⁸ Wife argues that the Court is not bound to the Commissioner’s calculations of Wife’s income.

The trial in the instant matter took place prior to the trial regarding the child support matter. This Court calculated Wife’s income based on the evidence before it and left the record open in the instant matter solely for the purposes of obtaining the amount of child support ordered so that this Court could consider the child support as part of Wife’s income. The Court has reviewed Commissioner Haley’s Child Support Order. Commissioner Haley did not make a finding as to Wife’s/Mother’s income but rather accepted the parties’ stipulation.¹⁹ Neither party appealed Commissioner Haley’s decision nor did they ask her to correct a clerical error. This Court has no information as to whether the parties’ stipulation was an accurate reflection of Wife’s income and is not bound by a Commissioner’s decision in this regard. Therefore, Husband’s argument in this regard is without merit.

II. Wife’s Motion to Reargue

A. Corrections – Rule 60(a) (&/or Reargument)

1. Wife’s Payroll Deductions.

Wife argues that the evidence at trial showed that Wife has payroll deductions of \$260.00 per month.²⁰ Similar to his argument in Husband’s Motion for Reargument, Husband asserts that the doctrines of *res judicata*, collateral estoppel, and law of the case doctrine bars Wife from relitigating the standard of living during the marriage.²¹ Husband further argues that Wife attempts an inequitable double-dip because she received a deduction for her retirement contributions in the child support calculations.²²

While the Court is aware that there were retirement assets in the property division settlement, the 2018 Alimony Order is silent as to contributions made toward retirement accounts. The Court’s Pretrial Order in this matter required the parties to exchange a list of their monthly expenses and for the opposing party to review that list and identify any objections.

¹⁸ Husband’s Motion at 9.

¹⁹ Permanent Support Order entered by Commissioner Haley at 10 (June 24, 2021) (stating that the parties stipulated that Wife’s monthly income was \$5,192)

²⁰ Wife’s Motion at 1.

²¹ Husband’s Response to Wife’s Motion. for Reargument. at 1 (herein, “Husband’s Response”)

²² Husband’s Response at 1.

Wife did not include a contribution to a retirement plan in her expenses. The Court will not consider arguments made in a Motion to Reargue that were not raised during the hearing. Had the argument been timely made, Husband would have had the opportunity to stipulate or oppose the request. As such, the Court will not consider the expense at this time.

2. Wife's Financial Services

Wife argues that the Court overlooked Wife's testimony which established that she needs financial advice that amounts to twenty-five dollars (\$25.00) per month.²³ Similar to his argument in Husband's Motion for Reargument, Husband asserts that the doctrines of *res judicata*, collateral estoppel, and law of the case doctrine bars Wife from relitigating the standard of living during the marriage.²⁴

While the parties did not pay for financial services during the marriage, Wife testified that she relied on Husband for financial services during the marriage and she still needs financial services. Husband did not deny that Wife was paying for financial services but only argues that it should not be considered. While it may be true that Wife needs financial services, it is not true that an additional expense of \$25 per month creates a change in circumstances.

3. Clarification of Tax Treatment

Wife asks the Court to clarify whether the Court considered the alimony taxable to Wife and deductible to Husband when issuing its Order.²⁵ Husband does not object to this clarification.²⁶ As alimony was a taxable event in the 2018 Order, the Court has considered it a taxable event in the current Order. The Court acknowledges that the Budget Report from the Family Law Software does not make it clear whether the calculation considered the alimony taxable or not. However, the Court has reviewed its Family Law Software calculation and confirmed that the correct boxes were checked/not checked when directing the program to create a Budget Report. The alimony is taxable to Wife and deductible to Husband.

B. Reargument - Attorney's Fees.

Wife argues she should be awarded attorney's fees under the bad faith exception of the American rule and that Wife did not waive her claim for fees in this action.²⁷ Husband argues that Wife's request for attorney's fees is barred by contract based on the plain language of the prior agreement.²⁸

²³ Wife's Motion at 2.

²⁴ Husband's Response at 1.

²⁵ Wife's Motion. at 2.

²⁶ Husband's Response at 2.

²⁷ Wife's Motion at 6.

²⁸ Husband's Response at 6.

At the time the ancillary matters were pending, the parties entered into a Stipulation resolving all matters with the exception of alimony. Among other things, the Stipulation included a paragraph which provided as follows:

... Except as otherwise expressly provided herein, each party waives and releases with prejudice, all claims against each other which were or could have been asserted in these proceedings, claims for support pursuant to 13 Del. C. §502, or claims for alimony pursuant to 13 Del. C. §1512, or claims for property division pursuant to 13 Del. C. §1512, or for legal expenses pursuant to 13 Del. C. §1515.

Oddly, despite the language in their agreement that they were waiving claims for alimony, Wife did not waive her claim for alimony and the Court, in fact, had a contested hearing regarding alimony. The language in their agreement specifically says claims *which were or could have been asserted in these proceedings*. A claim for modification of alimony could not have been asserted in those proceedings as there had not been an award of alimony at that point in time. Furthermore, modification of alimony is addressed in 13 Del. C. §1519 which is not specifically listed in the Stipulation. As such, this Court finds that Wife did not waive a claim for attorney's fees in the instant matter. However, as the Court did not address Wife's request for attorney's fees in its underlying Order, the Court will allow the parties to file a Motion for Attorney's Fees to provide the Court with argument as to why the American Rule regarding fees is not appropriate in the instant case, including but not limited to allegations that the other party was not reasonable in their settlement negotiations. The Court will address any Motion if and when it is filed.

C. Reargument or Correction re Expenses & Modification of Alimony

1. Wife's Expenses for Laundry/Dry Cleaning, Entertainment and Gasoline.

Wife argues that the Court erred when considering the evidence regarding some of her expenses, specifically laundry/dry cleaning, entertainment, and gasoline. This Court's Pretrial Order required the parties to exchange a list of their monthly expenses so that the opposing party could identify which expenses were objectionable. Wife supplied her list and Husband agreed to some of the expenses. Wife is now arguing that the Court should not use the amount that she listed for laundry/dry cleaning, entertainment and gasoline despite the parties agreement to the amounts Wife listed. In its analysis in the instant matter, the Court used the amounts that the parties agreed upon and will not revisit a decision that was based on the parties' agreement. As such, Wife's argument is without merit.

2. Wife's Expense for Yard and Household Maintenance

Wife further argues that the Court erred when it did not allow Wife the full amount of the expense she claimed for yard and household maintenance. Wife asserts that she testified that she

had to make multiple repairs to the home.²⁹ Similar to his argument in Husband's Motion for Reargument, Husband asserts that the doctrines of *res judicata*, collateral estoppel, and law of the case doctrine bars Wife from relitigating the standard of living during the marriage.³⁰ Husband further argues that Wife is contractually obliged, by the terms of the parties' Property Division Stipulation to pay for all costs associated with the former marital evidence.³¹

The Court made a decision regarding the average monthly expense needed for yard and household maintenance during the marriage based on evidence presented at the 2018 hearing. Obviously, expenses for one-time repairs on a house are going to fluctuate from year to year. In this instance, it appears that Wife has continued to incur maintenance costs but may not have made the repairs that existed in 2018. The Court does not question her reasoning for doing so if in fact it is true that she has not made those repairs but the Court is also not willing to change the amount that the Court previously established as an average monthly expense in 2018 just because Wife continues to have one-time expenses to repair things in the marital home. Maintenance in a home is expected and Wife agreed to be responsible for all expenses related to the marital home which she wished to retain. If the Court changed an alimony obligation every time more household maintenance was required, it is possible that litigation would never end. The Court made a determination in the 2018 as to a reasonable amount for an expense for household maintenance and Wife failed to prove why the Court should change the amount at this time. As such, Wife's argument is without merit.

WHEREFORE, for all of the reasons stated herein, both Motions are hereby **DENIED**.

IT IS SO ORDERED this 26th day of December, 2021.

/ Janell S. Ostroski /
JANELL S. OSTROSKI
Judge

cc: Parties, Counsel, File

²⁹ Wife's Motion at 7.

³⁰ Husband's Response at 11.

³¹ Husband's Response at 11